

AMENDED IN SENATE APRIL 21, 2009

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 737**

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**Introduced by Senator Negrete McLeod**

February 27, 2009

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An act to amend Sections 21670, 21670.1, 21670.4, 21671.5, 21674.7, 21675.1, 21678, 21679, and 21679.5 of, and to repeal Section 21677 of, the Public Utilities Code, relating to airports.

LEGISLATIVE COUNSEL'S DIGEST

SB 737, as amended, Negrete McLeod. Airports: airport land use commissions.

(1) The State Aeronautics Act governs the creation and operation of airports in this state. The act provides for the establishment of county airport land use commissions to carry out various requirements, including the formulation of a comprehensive land use compatibility plan to provide for the orderly growth of airports and the area surrounding airports within the jurisdiction of the commission, and to safeguard the general welfare of the inhabitants within the vicinity of an airport and the public in general. The act requires each county in which there is an airport served by a scheduled airline, with certain exceptions, to establish an airport land use commission.

Existing law requires each county in which there is an airport operated for the benefit of the public to establish an airport land use commission, but authorizes the board of supervisors of a county in which an airport is located that is operated for the benefit of the general public that is not served by a scheduled airline, after consultation with the appropriate airport operators and affected local entities and after public hearing, to adopt a resolution finding that there are no noise, public safety, or land

use issues affecting any airport in the county that require the creation of a commission and declaring that the county is exempt from establishing an airport land use commission.

This bill would eliminate the authority of the board of supervisors of a county in which an airport is located that is operated for the benefit of the general public that is not served by a scheduled airline, to adopt a resolution declaring that the county is exempt from establishing an airport land use commission. By eliminating this authority, the bill would impose a state-mandated local program by requiring a higher level of service.

(2) Existing law provides that, notwithstanding the above-described requirements, if the board of supervisors and the city selection committee of mayors in the county responsible for appointing a commission each makes a determination by a majority vote that proper land use planning can be accomplished through the actions of an appropriately designated body, then the body so designated shall assume the planning responsibilities of an airport land use commission pursuant to the act, and a commission need not be formed in that county.

This bill would require that if the board of supervisors and city selection committee determine that proper land use can be accomplished through the actions of an appropriately designated body, that the body be a countywide body. The bill would make other conforming changes and would delete certain obsolete provisions. By limiting the authority of a board of supervisors to designate a body to assume the planning responsibilities of a commission, the bill would impose a state-mandated local program by requiring a higher level of service.

(3) Under existing law, the board of supervisors of a county and each affected city in that county may make a determination that proper land use planning can be accomplished by the county and the affected cities, in which case an airport land use commission need not be formed. If a commission is not formed pursuant to these provisions, existing law requires the supervisors of the county and each affected city, subject to the review and approval of the Division of Aeronautics, to provide for the preparation of the airport land use compatibility plan, among other things.

The bill would eliminate the authority of a county board of supervisors and each affected city to assume the land use planning requirements themselves upon a determination that a commission need not be formed. The bill instead would allow a city in which an airport is located to assume the planning responsibilities of an airport land use commission

if, prior to January 1, 2010, the board of supervisors of a county and city council of any city in which an airport was located made a determination that the proper land use planning could be accomplished by the city and other requirements are met.

The bill would require that if a determination is made by the division that the city has not complied with the requirements of preparing an airport land use compatibility plan by January 1, 2010, then, within 90 days of that determination, the affected airport shall be subject to the airport land use commission.

By eliminating the authority of a board of supervisors of a county and each affected city in that county to determine that a commission is not required, the bill would impose a state-mandated local program by requiring a higher level of service.

(4) Under existing law, the general plan or special plans of a local agency, including a city, county, or special district, are required to be consistent with the airport land use compatibility plan, and each local agency whose general plan or plans includes areas covered by an airport land use compatibility plan is required to submit a copy of its plan, any amendment, any zoning ordinance, and any building regulation, to the airport land use commission, unless exempted, or to the designated body performing planning as an alternative to the airport land use commission. If the plan, amendment, zoning ordinance, or building regulation is inconsistent with the airport land use compatibility plan, the airport land use commission or designated body is required to notify the local agency, and the local agency is required to have a hearing to reconsider its plan or action.

Under existing law, a public agency owning any airport within the boundaries of an airport land use compatibility plan may overrule an airport land use commission's action or recommendation affecting an airport within the jurisdiction of that public agency, after a hearing, by a  $\frac{2}{3}$  vote of its governing body, except the County of Marin, which may overrule by a majority vote of its governing body, if it makes specific findings that the proposed action is consistent with the purposes of protecting public health, safety, and welfare, minimizing the public's exposure to excessive noise, and minimizing safety hazards within areas around the public airport.

This bill would repeal the authority of the County of Marin to overrule an airport land use commission's action or recommendation affecting an airport within the county by a majority vote.

(5) Existing law authorizes an airport land use commission to establish a schedule of fees necessary to comply with existing law relative to airport land use commissions and requires that the fees charged to proponents of actions, regulations, or permits not exceed the estimated reasonable cost of providing the service and be imposed pursuant to certain provisions of the Government Code. Existing law prohibits a commission that has not adopted an airport land use compatibility plan by June 30, 1991, from charging fees, with certain exceptions.

This bill would repeal the prohibition upon a commission charging fees if the commission has not adopted an airport land use compatibility plan by June 30, 1991, and would repeal the exceptions to that prohibition.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 21670 of the Public Utilities Code is  
2     amended to read:  
3     21670. (a) The Legislature hereby finds and declares that:  
4     (1) It is in the public interest to provide for the orderly  
5     development of each public use airport in this state and the area  
6     surrounding these airports so as to promote the overall goals and  
7     objectives of the California airport noise standards adopted  
8     pursuant to Section 21669 and to prevent the creation of new noise  
9     and safety problems.  
10    (2) It is the purpose of this article to protect public health, safety,  
11    and welfare by ensuring the orderly expansion of airports and the  
12    adoption of land use measures that minimize the public's exposure  
13    to excessive noise and safety hazards within areas around public  
14    airports to the extent that these areas are not already devoted to  
15    incompatible uses.  
16    (b) In order to achieve the purposes of this article, every county  
17    in which there is located an airport which is served by a scheduled

1 airline shall establish an airport land use commission. Every  
2 county, in which there is located an airport which is not served by  
3 a scheduled airline, but is operated for the benefit of the general  
4 public, shall establish an airport land use commission. For purposes  
5 of this section, “commission” means an airport land use  
6 commission. Each commission shall consist of seven members to  
7 be selected as follows:

8 (1) Two representing the cities in the county, appointed by a  
9 city selection committee comprised of the mayors of all the cities  
10 within that county, except that if there are any cities contiguous  
11 or adjacent to the qualifying airport, at least one representative  
12 shall be appointed therefrom. If there are no cities within a county,  
13 the number of representatives provided for by paragraphs (2) and  
14 (3) shall each be increased by one.

15 (2) Two representing the county, appointed by the board of  
16 supervisors.

17 (3) Two having expertise in aviation, appointed by a selection  
18 committee comprised of the managers of all of the public airports  
19 within that county.

20 (4) One representing the general public, appointed by the other  
21 six members of the commission.

22 (c) Public officers, whether elected or appointed, may be  
23 appointed and serve as members of the commission during their  
24 terms of public office.

25 (d) Each member shall promptly appoint a single proxy to  
26 represent him or her in commission affairs and to vote on all  
27 matters when the member is not in attendance. The proxy shall be  
28 designated in a signed written instrument which shall be kept on  
29 file at the commission offices, and the proxy shall serve at the  
30 pleasure of the appointing member. A vacancy in the office of  
31 proxy shall be filled promptly by appointment of a new proxy.

32 (e) A person having an “expertise in aviation” means a person  
33 who, by way of education, training, business, experience, vocation,  
34 or avocation has acquired and possesses particular knowledge of,  
35 and familiarity with, the function, operation, and role of airports.

36 (f) It is the intent of the Legislature to clarify, for the purposes  
37 of this article, that special districts, school districts, and community  
38 college districts are included among the local agencies that are  
39 subject to airport land use laws and other requirements of this  
40 article.

1 SEC. 2. Section 21670.1 of the Public Utilities Code is  
2 amended to read:

3 21670.1. (a) Notwithstanding any other provision of this  
4 article, if the board of supervisors and the city selection committee  
5 of mayors in the county each makes a determination by a majority  
6 vote that proper land use planning can be accomplished through  
7 the actions of an appropriately designated countywide body, then  
8 the body so designated shall assume the planning responsibilities  
9 of an airport land use commission as provided for in this article,  
10 and a commission need not be formed in that county.

11 (b) A body designated pursuant to subdivision (a) that does not  
12 include among its membership at least two members having  
13 expertise in aviation, as defined in subdivision (e) of Section 21670,  
14 shall, when acting in the capacity of an airport land use  
15 commission, be augmented so that body, as augmented, will have  
16 at least two members having that expertise.

17 (c) (1) Notwithstanding subdivisions (a) and (b), and  
18 subdivision (b) of Section 21670, if, prior to January 1, 2010, the  
19 board of supervisors of a county and the city council of any city  
20 in which an airport was located each made a determination that  
21 proper land use planning pursuant to this article could be  
22 accomplished pursuant to this subdivision, then that city may  
23 assume the planning responsibilities of an airport land use  
24 commission as provided for in this article for an affected airport,  
25 if all of the following conditions are met:

26 (A) The affected airport is certified by the Federal Aviation  
27 Administration of the United States Department of Transportation  
28 pursuant to Part 139 (commencing with Section 139.1) of Title 14  
29 of the Code of Federal Regulations.

30 (B) The affected airport has a noise compatibility program in  
31 effect approved by the Federal Aviation Administration pursuant  
32 to Part 150 (commencing with Section 150.1) of Title 14 of the  
33 Code of Federal Regulations.

34 (C) The affected airport is owned and operated by an agency  
35 that is headquartered in a county other than the county in which  
36 the airport is located.

37 (2) If the board of supervisors of a county and a city council  
38 made a determination pursuant to paragraph (1), then the city  
39 council, subject to the review and approval by the Division of  
40 Aeronautics of the department, shall do all of the following:

1 (A) Adopt processes for the preparation, adoption, and  
2 amendment of the airport land use compatibility plan for each  
3 airport that is served by a scheduled airline or operated for the  
4 benefit of the general public.

5 (B) Adopt processes for the notification of the general public,  
6 landowners, interested groups, and other public agencies regarding  
7 the preparation, adoption, and amendment of the airport land use  
8 compatibility plans.

9 (C) Adopt processes for the mediation of disputes arising from  
10 the preparation, adoption, and amendment of the airport land use  
11 compatibility plans.

12 (D) Adopt processes for the amendment of general and specific  
13 plans to be consistent with the airport land use compatibility plans.

14 (E) Designate the agency that shall be responsible for the  
15 preparation, adoption, and amendment of each airport land use  
16 compatibility plan.

17 (3) The Division of Aeronautics of the department shall review  
18 the processes adopted pursuant to paragraph (2), and shall approve  
19 the processes if the division determines that the processes are  
20 consistent with the procedure required by this article and will do  
21 all of the following:

22 (A) Result in the preparation, adoption, and implementation of  
23 plans within a reasonable amount of time.

24 (B) Rely on the height, use, noise, safety, and density criteria  
25 that are compatible with airport operations, as established by this  
26 article, and referred to as the Airport Land Use Planning Handbook,  
27 published by the division, and any applicable federal aviation  
28 regulations, including, but not limited to, Part 77 (commencing  
29 with Section 77.1) of Title 14 of the Code of Federal Regulations.

30 (C) Provide adequate opportunities for notice to, review of, and  
31 comment by the general public, landowners, interested groups,  
32 and other public agencies.

33 (4) If the city does not comply with the requirements of  
34 paragraph (2) by January 1, 2010, then the affected airport shall  
35 be subject to the airport land use commission within 90 days of  
36 the determination of noncompliance by the division.

37 SEC. 3. Section 21670.4 of the Public Utilities Code is  
38 amended to read:

39 21670.4. (a) As used in this section, “intercounty airport”  
40 means any airport bisected by a county line through its runways,

1 runway protection zones, inner safety zones, inner turning zones,  
2 outer safety zones, or sideline safety zones, as defined by the  
3 department's Airport Land Use Planning Handbook and referenced  
4 in the airport land use compatibility plan formulated under Section  
5 21675.

6 (b) It is the purpose of this section to provide the opportunity  
7 to establish a separate airport land use commission so that an  
8 intercounty airport may be served by a single airport land use  
9 planning agency, rather than having to look separately to the airport  
10 land use commissions of the affected counties.

11 (c) In addition to the airport land use commissions created under  
12 Section 21670, or the alternative planning undertaken pursuant to  
13 subdivision (c) of Section 21670.1, for their respective counties,  
14 the boards of supervisors and city selection committees for the  
15 affected counties, by independent majority vote of each county's  
16 two delegations, for any intercounty airport, may do either of the  
17 following:

18 (1) Establish a single separate airport land use commission for  
19 the airport. The airport land use commission shall consist of seven  
20 members to be selected as follows:

21 (A) One representing the cities in each of the counties, appointed  
22 by that county's city selection committee.

23 (B) One representing each of the counties, appointed by the  
24 board of supervisors of each county.

25 (C) One from each county having expertise in aviation,  
26 appointed by a selection committee comprised of the managers of  
27 all the public airports within that county.

28 (D) One representing the general public, appointed by the other  
29 six members of the commission.

30 (2) Designate an existing appropriate countywide entity as that  
31 airport's land use commission pursuant to subdivision (a) or (b)  
32 of Section 21670.1.

33 SEC. 4. Section 21671.5 of the Public Utilities Code is  
34 amended to read:

35 21671.5. (a) Except for the terms of office of the members of  
36 the first commission, the term of office of each member shall be  
37 four years and until the appointment and qualification of his or her  
38 successor. The members of the first commission shall classify  
39 themselves by lot so that the term of office of one member is one  
40 year, of two members is two years, of two members is three years,



1 and of two members is four years. The body that originally  
2 appointed a member whose term has expired shall appoint his or  
3 her successor for a full term of four years. Any member may be  
4 removed at any time and without cause by the body appointing  
5 that member. The expiration date of the term of office of each  
6 member shall be the first Monday in May in the year in which that  
7 member's term is to expire. Any vacancy in the membership of  
8 the commission shall be filled for the unexpired term by  
9 appointment by the body which originally appointed the member  
10 whose office has become vacant. The chairperson of the  
11 commission shall be selected by the members thereof.

12 (b) Compensation, if any, shall be determined by the board of  
13 supervisors.

14 (c) Staff assistance, including the mailing of notices and the  
15 keeping of minutes and necessary quarters, equipment, and supplies  
16 shall be provided by the county. The usual and necessary operating  
17 expenses of the commission shall be a county charge.

18 (d) Notwithstanding any other provisions of this article, the  
19 commission shall not employ any personnel either as employees  
20 or independent contractors without the prior approval of the board  
21 of supervisors.

22 (e) The commission shall meet at the call of the commission  
23 chairperson or at the request of the majority of the commission  
24 members. A majority of the commission members shall constitute  
25 a quorum for the transaction of business. No action shall be taken  
26 by the commission except by the recorded vote of a majority of  
27 the full membership.

28 (f) The commission may establish a schedule of fees necessary  
29 to comply with this article. Those fees shall be charged to the  
30 proponents of actions, regulations, or permits, shall not exceed the  
31 estimated reasonable cost of providing the service, and shall be  
32 imposed pursuant to Section 66016 of the Government Code.

33 SEC. 5. Section 21674.7 of the Public Utilities Code is  
34 amended to read:

35 21674.7. (a) An airport land use commission that formulates,  
36 adopts, or amends an airport land use compatibility plan shall be  
37 guided by information prepared and updated pursuant to Section  
38 21674.5 and referred to as the Airport Land Use Planning  
39 Handbook published by the Division of Aeronautics of the  
40 Department of Transportation.

(b) It is the intent of the Legislature to discourage incompatible land uses near existing airports. Therefore, prior to granting permits for the renovation or remodeling of an existing building, structure, or facility, and before the construction of a new building, it is the intent of the Legislature that local agencies shall be guided by the height, use, noise, safety, and density criteria that are compatible with airport operations, as established by this article, and referred to as the Airport Land Use Planning Handbook, published by the division, and any applicable federal aviation regulations, including, but not limited to, Part 77 (commencing with Section 77.1) of Title 14 of the Code of Federal Regulations, to the extent that the criteria has been incorporated into the plan prepared by a commission pursuant to Section 21675. This subdivision does not limit the jurisdiction of a commission as established by this article. This subdivision does not limit the authority of local agencies to overrule commission actions or recommendations pursuant to Section 21676 or 21676.5.

SEC. 6. Section 21675.1 of the Public Utilities Code is amended to read:

21675.1. (a) Until a commission adopts an airport land use compatibility plan, a city or county shall first submit all actions, regulations, and permits within the vicinity of a public airport to the commission for review and approval. Before the commission approves or disapproves any actions, regulations, or permits, the commission shall provide public notice in the same manner as the city or county is required to provide for those actions, regulations, or permits. As used in this section, “vicinity” means land that will be included or reasonably could be included within the airport land use compatibility plan. If the commission has not designated an airport influence area for the airport land use compatibility plan, “vicinity” means land within two miles of the boundary of a public airport.

(b) The commission may approve an action, regulation, or permit if it finds, based on substantial evidence in the record, all of the following:

(1) The commission is making substantial progress toward the completion of the airport land use compatibility plan.

(2) There is a reasonable probability that the action, regulation, or permit will be consistent with the airport land use compatibility plan being prepared by the commission.

1 (3) There is little or no probability of substantial detriment to  
2 or interference with the future adopted airport land use  
3 compatibility plan if the action, regulation, or permit is ultimately  
4 inconsistent with the airport land use compatibility plan.

5 (c) If the commission disapproves an action, regulation, or  
6 permit, the commission shall notify the city or county. The city or  
7 county may overrule the commission, by a two-thirds vote of its  
8 governing body, if it makes specific findings that the proposed  
9 action, regulation, or permit is consistent with the purposes of this  
10 article, as stated in Section 21670.

11 (d) If a city or county overrules the commission pursuant to  
12 subdivision (c), that action shall not relieve the city or county from  
13 further compliance with this article after the commission adopts  
14 the airport land use compatibility plan.

15 (e) If a city or county overrules the commission pursuant to  
16 subdivision (c) with respect to a ~~publicly owned~~ *public use* airport  
17 that the city or county does not operate, the operator of the airport  
18 is not liable for damages to property or personal injury resulting  
19 from the city's or county's decision to proceed with the action,  
20 regulation, or permit.

21 (f) A commission may adopt rules and regulations that exempt  
22 any ministerial permit for single-family dwellings from the  
23 requirements of subdivision (a) if it makes the findings required  
24 pursuant to subdivision (b) for the proposed rules and regulations,  
25 except that the rules and regulations may not exempt

26 single-family dwellings in a subdivision where 25 percent or  
27 more of the parcels are undeveloped.

28 SEC. 7. Section 21677 of the Public Utilities Code is repealed.

29 SEC. 8. Section 21678 of the Public Utilities Code is amended  
30 to read:

31 21678. With respect to a ~~publicly owned~~ *public use* airport that  
32 a public agency does not operate, if the public agency pursuant to  
33 Section 21676 or 21676.5 overrules a commission's action or  
34 recommendation, the operator of the airport shall be immune from  
35 liability for damages to property or personal injury caused by or  
36 resulting directly or indirectly from the public agency's decision  
37 to overrule the commission's action or recommendation.

38 SEC. 9. Section 21679 of the Public Utilities Code is amended  
39 to read:

1 21679. (a) In any county in which the airport land use  
2 commission or other designated body has not adopted an airport  
3 land use compatibility plan, an interested party may initiate  
4 proceedings in a court of competent jurisdiction to postpone the  
5 effective date of a zoning change, a zoning variance, the issuance  
6 of a permit, or the adoption of a regulation by a local agency, that  
7 directly affects the use of land within one mile of the boundary of  
8 a public airport within the county.

9 (b) The court may issue an injunction that postpones the  
10 effective date of the zoning change, zoning variance, permit, or  
11 regulation until the governing body of the local agency that took  
12 the action does one of the following:

13 (1) In the case of an action that is a legislative act, adopts a  
14 resolution declaring that the proposed action is consistent with the  
15 purposes of this article stated in Section 21670.

16 (2) In the case of an action that is not a legislative act, adopts a  
17 resolution making findings based on substantial evidence in the  
18 record that the proposed action is consistent with the purposes of  
19 this article stated in Section 21670.

20 (3) Rescinds the action.

21 (4) Amends its action to make it consistent with the purposes  
22 of this article stated in Section 21670, and complies with either  
23 paragraph (1) or (2), whichever is applicable.

24 (c) The court shall not issue an injunction pursuant to  
25 subdivision (b) if the local agency that took the action demonstrates  
26 that the general plan and any applicable specific plan of the agency  
27 accomplishes the purposes of an airport land use compatibility  
28 plan as provided in Section 21675.

29 (d) An action brought pursuant to subdivision (a) shall be  
30 commenced within 30 days of the decision or within the appropriate  
31 time periods set by Section 21167 of the Public Resources Code,  
32 whichever is longer.

33 (e) If the governing body of the local agency adopts a resolution  
34 pursuant to subdivision (b) with respect to a ~~publicly owned~~ *public*  
35 *use* airport that the local agency does not operate, the operator of  
36 the airport shall be immune from liability for damages to property  
37 or personal injury from the local agency's decision to proceed with  
38 the zoning change, zoning variance, permit, or regulation.

39 (f) As used in this section, "interested party" means any owner  
40 of land within two miles of the boundary of the airport or any

1 organization with a demonstrated interest in airport safety and  
2 efficiency.

3 SEC. 10. Section 21679.5 of the Public Utilities Code is  
4 amended to read:

5 21679.5. (a) No action pursuant to Section 21679 to postpone  
6 the effective date of a zoning change, a zoning variance, the  
7 issuance of a permit, or the adoption of a regulation by a local  
8 agency, directly affecting the use of land within one mile of the  
9 boundary of a public airport, shall be commenced in any county  
10 in which the commission or other designated body has not adopted  
11 an airport land use compatibility plan, but is making substantial  
12 progress toward the completion of the airport land use compatibility  
13 plan.

14 (b) An action to postpone the effective date of a zoning change,  
15 a zoning variance, the issuance of a permit, or the adoption of a  
16 regulation by a local agency, directly affecting the use of land  
17 within one mile of the boundary of a public airport for which an  
18 airport land use compatibility plan has not been adopted shall be  
19 commenced within 30 days of the decision by the local agency,  
20 or within the appropriate time periods set by Section 21167 of the  
21 Public Resources Code, whichever date is later.

22 SEC. 11. No reimbursement is required by this act pursuant to  
23 Section 6 of Article XIII B of the California Constitution because  
24 a local agency or school district has the authority to levy service  
25 charges, fees, or assessments sufficient to pay for the program or  
26 level of service mandated by this act, within the meaning of Section  
27 17556 of the Government Code.